PREPARED STATEMENT

INTELLIGENCE OPERATIONS SUBCOMMITTEE

SENATE APPROPRIATIONS COMMITTEE

Mr. Chairman,

The legislative proposal, which is the subject of Senator Proxmire's letter of 1 July 1974 to you and which has received considerable attention in the press, became public in the course of my recent court case testimony against Mr. Marchetti and Mr. Marks who, as you know, have written a book entitled, "The CIA and the Cult of Intelligence."

On 14 January 1974 I submitted the proposal to the Office of Management and Budget for review. I emphasize that this is a legislative proposal which is being subjected to the normal coordination and review within the executive branch prior to its formal submission to the Congress. The Department of Justice has raised a number of points with respect to the legislation and we have been discussing these with them. Some changes undoubt will result from these exchanges.

The Congress, in the National Security Act of 1947, imposed upon the Director of Central Intelligence the statutory responsibility for protecting intelligence sources and methods from unauthorized disclosure. While this legislation placed a serious responsibility on the Director, it

provided no specific legislative sanctions which would enable him to carry out this responsibility. You may recall that when former Director Helms testified before the Ervin Committee, he stated that the greatest frustration he experienced as Director concerned this responsibility. The only criminal sanctions which might be applicable to across-the-board disclosures of intelligence sources and methods information are contained in the Espionage Act and require both proof that the disclosure involved was harmful to the national defense and was either intended to aid a foreign government or harm the U. S. These provisions stem from the emphasis in the Espionage Act on protection of military installations and military information, particularly in time of war.

It has been our experience that this legislation has been generally inadequate for Justice Department prosecution of cases involving intelligence sources and methods. For one thing, it may be necessary in such prosecutions to disclose as much or more information in the course of the trial than was disclosed in the first instance. Furthermore, defendents in such cases may well contend that there was no intent on their part to harm the U. S. In fact, they would argue that their disclosure was made in the national interest. Other provisions of law where these burdens are not found are limited to Communications Intelligence and "Restricted Data" or transmittal of classified information to a foreign agent.

We found in the case of Mr. Marchetti's proposed publication of his book that relying on the secrecy agreement, which Mr. Marchetti entered into at the time of his employment with the Government, is indeed a very slender reed since it applies a contract theory of law and is not a matter of criminal sanction. It has been my feeling that as Director of Central Intelligence I have an obligation to make every effort to carry out the responsibility placed upon me under the National Security Act and, in view of the inadequacies of current provisions of law, I submitted my proposal to the Office of Management and Budget.

The proposed legislation amends Section 102 of the National Security Act of 1947 by adding a new subsection (g) defining "information relating to intelligence sources and methods" as a separate category of classified information to be accorded statutory recognition and protection similar to that provided "Restricted Data" under the Atomic Energy Act. The proposed law grants the Director of Central Intelligence the authority to issue rules and regulations limiting the dissemination of information related to intelligence sources and methods of collection and provides for a criminal penalty for the disclosure of such information to unauthorized persons and for injunctive relief.

The greatest risks of disclosure come from persons who are entrusted with information relating to intelligence sources and methods through a privity of relationship with the U. S. Government. When such

persons, without authorization, disclose information to representatives of the public media, it receives wide publication; and, of course, is revealed to the foreign nations which may be the subject of or otherwise involved in the intelligence activities, leading to their termination as well as political or diplomatic difficulties.

A fully effective security program might require legislation to encompass the willful disclosures of classified information by all persons knowing or having reason to know of its sensitivity. However, in order to limit the free circulation of information in our American society only to the degree essential to the conduct of a national foreign intelligence effort, this legislation proposes that prosecution be provided only for persons who have authorized possession of such information or acquire it through a privity of relationship to the Government. Other persons collaterally involved in any offense would not be subject to prosecution. Further, disclosures to Congress upon lawful demand would be expressly excluded from the provisions of the proposed law.

In order to provide adequate safeguards to an accused, while at the same time preventing damaging disclosures during the course of prosecution, subsection (g)(5) provides for an in camera determination by the court of the reasonableness of the designation for limited distribution of the information upon which prosecution is brought.

Finally, in order to prevent disclosures, subsection (g)(6) provides statutory authority for the enjoinder of threatened acts in violation of the subsection upon a showing by the Director of Central Intelligence that any person is about to commit a violation of the subsection or any rule and regulation issued thereunder.

Mr. Chairman, I am frankly perplexed by the comments and assertions in Senator Proxmire's letter to you. I can only say that, in my opinion, a reasonable reading and interpretation of the proposed legislation will indicate that:

1. The bill does not increase the power of the Director in police and law enforcement matters. The Director has no such power under present law and would not be granted such authority by the proposed legislation. The only function of the Director under the bill would be to establish rules and regulations for the dissemination or distribution of "information relating to Intelligence Sources and Methods." As I have mentioned previously, the Director already has the responsibility under existing law to protect such information from unauthorized disclosure.

2. Further, the bill provides for judicial review of the Director's designation of information as being related to Intelligence Sources and Methods.

3. Finally, the bill clearly states that the Attorney General, not the Director, is responsible for taking the legal actions provided

for in the bill. The Director's function is to advise the Attorney General when in his judgment violations of the provisions of the bill have occurred or are imminent.

In closing, Mr. Chairman, I would like to mention that there is in the legislation pending before your Criminal Laws Subcommittee an enlargement of the current Scarbeck statute which would be helpful if it is enacted in its present form. It is my understanding that final action on the revision of Title 18, legislation in which it is incorporated, is not likely in this Congress.